

REMARKS

The Office Action mailed on February 26, 2002 has been received and its contents have been carefully reviewed. Claims 1-2 and 4-21 were pending in this application. Of these claims, claims 1-2, 4-8, 10-11, 13, 15-18 and 21 are pending for consideration on the merits, with the other claims being withdrawn at this time. No claim amendments have been made.

Preliminarily, Applicants understand that the claims of this application are not under final rejection, even though the "Final" action box was inadvertently checked. In this regard, this is the first office action on the merits following the Applicants' CPA application filed on September 24, 2001, which was accompanied by a Preliminary Amendment that amended claims 1 and 5. In addition, Applicants understand that the reference to "Kado ('198)" should instead be "Kato ('198)," meaning U.S. Patent No. 5,868,198 to Kato.

In the present Office Action, claims 1-2, 4, 13, 15, 18, and 21 stand rejected under 35 U.S.C. § 103 as obvious based on JP 4-244596 to Ikagawa ("Ikagawa") in view of U.S. Patent No. 5,868,198 to Kato ("Kato '198"). The Office Action points to Ikagawa as teaching all of the recited elements, except having the arch sections in the reinforcement holes extend in a thickness direction. The Office Action relies on Kato '198 as disclosing this feature. Applicants respectfully traverse this rejection below.

First, neither reference teaches or suggests specifically the claim recitation in claim 1 of having the width of the insertion section "smaller than a width of said reinforcement hole as well as larger than a length of the linear section so that said insertion section is inserted into said reinforcement hole by press-fitting." The structure in Kato '198 - of a side plate with width tapering toward its end face - would appear to have an insertion section whose width exceeds that of the reinforcement hole, rather than the specific dimensions as recited in claim 1. In other words, Kato '198 does not teach or suggest the specified dimensions of the insertion section relative to the reinforcement hole. Further, Ikagawa simply does not give any details on this point. Therefore, even if the teachings of these patents could possibly be combined, the combination does not reach the present claimed invention of claim 1.

*if true, tube will not fit into slot. Lol.*

Second, the Office Action's reliance on Kato '198 is suspect because that reference specifically teaches the person of ordinary skill in the art to use a side plate hole

that is smaller than the tube hole, not the same or greater size than the tube hole as in claim 1. Therefore, Kato '198 actually leads the person of ordinary skill in the art away from the claimed invention just as much as it motivates (according to the Office Action) the shape and positioning of any insertion hole for the side plate. The reference provides no reason for using the particular shape and positioning of the insertion hole while keeping the size of the side plate hole as large as the tube hole. The person of ordinary skill in the art, without the benefit of hindsight, would not have been motivated to use the one specific isolated feature of Kato '198, to the exclusion of others, in Ikagawa as proffered in the Office Action. Thus, claim 1 and its dependent claims are patentable over Ikagawa and Kato '198.

In addition, the Office Action has rejected claims 5-8, 10-11 and 16-17 under section 103 based on the same art as applied to claim 1, further in view of GB Patent Document No. 2,064,751 to Hooton ("Hooton") and U.S. Patent No. 5,535,819 to Matsuura ("Matsuura"). The examiner relies on Hooton for disclosing tubes smaller than the fins and Matsuura (Figure 20) for disclosing having a reinforcement member with a smaller width than the fin width.

Applicants do not understand the Office Action's reliance on Matsuura. Thus, Applicants understand that, in Matsuura, the side plates 6 in Figure 20 are of the same width as fins 3, not smaller than the width of the fins. Therefore, the reference does not have the teaching as asserted in the Office Action. On this basis, the rejection to claim 5 and its dependent claims should be withdrawn.

Further, this section 103 rejection is a classic case of picking and choosing selected features in various references to reach the claimed invention, which is not permitted. Thus, the Federal Circuit has stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). In this regard, the Office Action has taken isolated features from four different references, without any clear motivation to combine them, to reach the claimed invention. In fact, conflicting motivations are used in the rejection. The Office Action states, on the one hand, that it would have been obvious to use fins that are wider than the tubes to enhance heat transfer. The Office Action also states that the reinforcement member should be a narrower width than the fins to reduce manufacturing costs and weight. This latter

asserted motivation, however, would run against the person of ordinary skill in the art using wider fins than tubes, because that change also adds weight and increases manufacturing costs.

*not required* / In this regard, it is important that none of the grounds of motivation stated in the Office Action is found in the references themselves (as understood by Applicants). Applicants recognize that motivation does not have always have to be specifically stated in the reference, but, in this case, the lack of any stated motivation confirms that the examiner is picking and choosing isolated features from various references. In this regard, for example, Hooton does not even describe the feature of the fins being larger than the tubes in its description, much less stating any advantage thereof. Therefore, the section 103 rejection of claim 5 and the claims depending therefrom should be withdrawn.

In short, Applicant respectfully asserts that the pending claims are patentable over the cited art.

**CONCLUSION**

In view of the foregoing, it is respectfully urged that the present claims are in condition for allowance. An early notice to this effect is earnestly solicited. Should there be any questions regarding this application, the Examiner is invited to contact the undersigned at the number shown below.

Respectfully submitted,

May 24, 2002

Date

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